

The opinion in support of the decision being entered today is not binding precedent of the Board.

Paper ~~24~~18

Filed by: Trial Section Merits Panel
Mail Stop Interference
P.O. Box 1450
Alexandria, VA 22313-1450
Tel: 571-272-9797
Fax: 571-273-0042

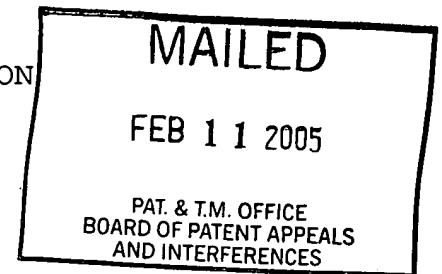
Filed
11 February 2005

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES
(Administrative Patent Judge Mark Nagumo)

STEVEN L. **STICE**,
JOSE CIBELLI, JAMES ROBL,
PAUL GOLUEKE, F. ABEL PONCE de LEON
and D. JOSEPH JERRY,

Junior Party,
(Patent 6,235,970 and
Reissue Application 10/833,993),



v.

KEITH HENRY STOCKMAN **CAMPBELL**
and IAN WILMUT,

Senior Party,
(Application 09/989,126).

Patent Interference No. 105,192

Before: MCKELVEY, Senior Administrative Patent Judge, LANE, and
NAGUMO, Administrative Patent Judges.

NAGUMO, Administrative Patent Judge.

JUDGMENT

I. Introduction

The following findings of fact are supported by a preponderance of evidence in the record.

1. As a result of the findings of fact and conclusions of law set out in Paper 93 (Decision - substantive motions) of this interference, Stice is not entitled to a patent to any claims of its involved U.S. patent No. 6,235,970.

2. As a result of the findings of fact and conclusions of law set out in Paper 93 (Decision - substantive motions) of this interference, Stice is not entitled to a patent to any claims of Stice reissue application 10/833,993, which is based on the Stice 6,235,970 patent.

III. Discussion

An interference is a proceeding to determine whether or not a patent may be issued to an applicant based on an application, all the claims of which are allowable but for the possibility that another first invented the same subject matter. 35 U.S.C. § 102(g). *Cf. Case v. CPC Int'l, Inc.*, 730 F.2d 745, 750, 221 USPQ 196, 200 (Fed. Cir. 1984) ("[n]o interference in fact means that there is no interfering subject matter, that Case's patent is no impediment to granting CPC the claims of its application.")

Stice is not entitled to any of its patented claims

corresponding to the count: thus, Stice patent 6,235,970 is not an impediment to the issuance of a patent to Campbell based on the 09/989,126 involved application. Similarly, Stice is not entitled to a patent on any of the claims in its reissue application: Thus, the Stice reissue application is not an impediment to the issuance of a patent to Campbell based on the 10/833,993 reissue application. Moreover, Campbell, as the senior party, is presumed to be entitled to the decision on priority.

Under these circumstances, no purpose would be served by proceeding to a priority contest in this interference.

II. Order

In view of the findings of fact and conclusions of law set out in Paper 93 (Decision - substantive motions) of this interference, it is:

ORDERED that Steven L. Stice, Jose Cibelli, James Robl, Paul Golueke, F. Abel Ponce de Leon, and D. Joseph Jerry are not entitled to a patent containing claims 1-21 of U.S. Patent No. 6,235,970.

FURTHER ORDERED that Steven L. Stice, Jose Cibelli, James Robl, Paul Golueke, F. Abel Ponce de Leon, and D. Joseph

Interference 105,192
Stice v. Campbell

Paper 94

Jerry are not entitled to a patent on claims 1-11, 13 and 15-21 of reissue application 10/833,993.

FURTHER ORDERED that this judgment is final for purposes of appeal regarding the status of Stice's 6,235,970 patent.

FURTHER ORDERED that this paper be given an appropriate number and placed in the patent file of U.S. Patent 6,235,970, in the application file of 09/989,126, and in the reissue application file of 10/833,993.

FURTHER ORDERED that the reissue application is returned to the jurisdiction of the primary examiner for action not inconsistent with this decision.

FURTHER ORDERED that the attention of Campbell and the primary examiner is directed to related cases 09/989,178 and 09/989,125, both currently suspended;

FURTHER ORDERED that if there is a settlement, the
attentions of the parties are directed to 35 U.S.C. § 135(c) and
37 CFR § 41.205.

_____)	
FRED E. McKELVEY)	
Senior Administrative Patent Judge)	
)	
)	BOARD OF
_____)	PATENT APPEALS
SALLY GARDNER LANE)	AND
Administrative Patent Judge)	INTERFERENCES
)	
)	
_____)	TRIAL SECTION
MARK NAGUMO)	MERITS PANEL
Administrative Patent Judge)	

Alexandria, VA
11 February 2005

cc: via first class mail:

Counsel for Stice:

Ronald A. Daignault, Esq.
MERCHANT & GOULD, P.C.
1101 30th Street, N.W.,
Suite 500
Washington, DC 20007

Phone: 202-625-8380
Fax: 202-625-8381

Counsel for Campbell:

Kenneth J. Meyers, Esq.
FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, LLP
1300 I Street, N.W.,
Suite 700
Washington, DC 20005

Phone: 202-408-4000
Fax: 202-408-4400

INTERFERENCE DIGEST

Interference No. 105,192

Paper No. 15

Name: Keith Campbell et al.

Serial No.: 09/989,126

Patent No.

Title: Unactivated oocytes as cytoplasm recipients for nuclear transfer

Filed: 11/21/01

Interference with Stice et al.

DECISION ON MOTIONS

Administrative Patent Judge, _____ Dated, _____

FINAL DECISION

Board of Patent Appeals and Interferences, favorable Dated, 2-11-05

Court, _____ Dated, _____

REMARKS

This should be placed in each application or patent involved in interference in addition to the interference letters.